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Municipal Newsletter

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Failure to Comply with a Code Requirement

In an attempt to allow local governments to combat neighborhood blight and revitalize their communities, the Pennsylvania General Assembly has enacted new legislation. On July 10, 2015, Section 7510 of Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes ("Pa. C.S."), which was the offense of municipal housing code avoidance, was rescinded and replaced by Section 6115 of Title 53 (Municipal Corporations) of the Pa. C.S., which is now called failure to comply with a code requirement.

18 Pa. C.S.A. Section 7510 stated:

(a) Offense defined.—A person commits the crime of municipal housing code avoidance if:

- (1) the person has been convicted of a fourth or subsequent violation of the same subsection of a municipal housing code for the same property;
- (2) the violation has been continual and uncorrected;
- (3) the violation poses a threat to the public's health, safety or property; and
- (4) no reasonable attempt has been made by the person to correct the violation.

(b) Grading.—Municipal housing code avoidance shall constitute a:

- (1) Misdemeanor of the second degree when the offense is a fourth conviction of a violation of the same subsection under a municipal housing code relating to the same property.
- (2) Misdemeanor of the first degree when the

offense is based on five or more convictions of violations of the same subsection under a municipal housing code relating to the same property.

(c) Definition.—As used in this section, the term "municipal housing code" means any municipality's building, housing or property maintenance code or ordinance.

53 Pa. C.S.A. Section 6115 states (the new law):

(a) Offense defined.—The owner of real property commits the offense of failure to comply with a code requirement if all of the following apply:

- (1) The owner of real property has been convicted of a second or subsequent serious violation of the same provision of a municipal code for the same property.
- (2) The violation poses a threat to the public's health, safety or property and the owner has not taken a substantial step to correct the violation.
- (3) The violation is considered a public nuisance and the owner has not made a reasonable attempt to correct the violation.

(b) Grading.—Failure to comply with a code requirement shall constitute a:

- (1) Misdemeanor of the second degree if the offense is a second conviction of a serious violation of the same provision of a municipal code relating to the same property.
- (2) Misdemeanor of the first degree if the offense is based on three or more convictions of serious violations of the same provision

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of a municipal code relating to the same property.

(c) Definition.—As used in this section, “code requirement” shall mean a building, housing or property maintenance code or ordinance of a municipality.

In the previous statute “a person” committed offense. There was no distinguishing whether the person was a human being and/or an entity, such as a company. Now, the new law specifies “the owner of real property” is culpable. Thus, there can be no doubt the statute is applicable to both a human being and an entity.

In addition, while the offense previously was not applicable until the fourth or subsequent conviction of the same subsection of a municipal housing code for the same property, the new law reduces the conviction number to the second or subsequent violation. Furthermore, the violations must be serious, for the same provision of a municipal code and for the same property. The new statute in Title 53 is broader in the sense of what violations count towards the two violations. That is, instead of the violation being limited to the repeated infraction of a subsection a particular section, a violation of the same sections, which may consist of many subsections, now applies.

What makes this statute particularly interesting is the classification of the violations as misdemeanors rather than summary offenses, as is usually restricted by violations of municipal ordinances and codes. For a second conviction, the offense is a misdemeanor of the second degree. This consists of a fine not in excess of \$5,000 and/or imprisonment not exceeding two years; for a third or subsequent conviction, the offense is a misdemeanor of the first degree, which entails a fine of not more than \$10,000 and/or within five years of incarceration. 18 Pa. C.S.A. Sections 1101(4) and (5) and 1104(1) and (2).

This new statute became effective September 8, 2015.